

**From:** [Parikh, Pooja](#)  
**To:** [Lane, Peg](#)  
**Subject:** email 7 of 8  
**Date:** Wednesday, May 29, 2013 10:39:01 AM

(b) (5)



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**From:** Pooja Parikh [mailto:Parikh.Pooja@epamail.epa.gov]  
**Sent:** Wednesday, May 29, 2013 2:35 PM  
**To:** Parikh, Pooja  
**Subject:** 7th batch of 5

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----- Forwarded by Pooja Parikh/DC/USEPA/US on 05/29/2013 02:35 PM -----

From: Pooja Parikh/DC/USEPA/US  
To: M ke Shapiro/DC/USEPA/US@EPA, Ephraim King/DC/USEPA/US@EPA, Maryt Smith/DC/USEPA/US@EPA, Janet Goodwin/DC/USEPA/US@EPA, Carey Johnston/DC/USEPA/US@EPA, Pat Hirsch/DC/USEPA/US@EPA, Mary-Kay Lynch/DC/USEPA/US@EPA, Steven Neugeboren/DC/USEPA/US@EPA, Lee Schroer/DC/USEPA/US@EPA, Mike Bussell/R10/USEPA/US@EPA, Mike Gearheard/R10/USEPA/US@EPA, Michael Lidgard/R10/USEPA/US@EPA, Teddy Ryerson/R9/USEPA/US@EPA, Courtney Hamamoto/R10/USEPA/US@EPA, David Allnutt/R10/USEPA/US@EPA  
Date: 05/12/2009 08:58 AM  
Subject: Scheduling meeting with Bob Sussman on Cook Inlet Settlement Discussions

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**Update on Status of Settlement Negotiations:** In response to our motion for a stay to allow the parties to discuss possible settlement, the Ninth Circuit extended EPA's deadline for our response brief from April 15 to June 1, 2009. On April 17, 2009, EPA and DOJ attorneys and Mike Gearheard had a conference call with attorneys for the environmental petitioners. On that call, petitioners' attorneys identified five substantive requests that could settle the litigation:

- (1) EPA would agree to revisit and possibly revise the ELG to establish zero discharge (described as the "main thing" petitioners wanted);
- (2) As interim relief during the ELG revision rulemaking, EPA would agree to propose to modify the existing general permit to tighten up on various limits;
- (3) EPA would agree to propose to establish antidegradation implementation procedures for Alaska;
- (4) EPA would agree to greater oversight of Alaska permits (especially where industry does the modeling to support the permit conditions); and
- (5) EPA would agree to conduct a fish contamination study in Cook Inlet.

Various internal EPA discussions have occurred regarding possible options for settlement. The purpose of this email is to update everyone re these conversations, so we all have this information as we continue to move towards a final decision on settlement or litigation.

**Discussion with Pat Hirsch on May 7th:** OGC staff updated Pat Hirsch last Thursday regarding the status of our settlement efforts. We told her that OST was leaning against recommending initiating an ELG revision rulemaking and that the Region was leaning against modifying the permit to address the technical issues that the litigants had raised. In other words, we were not prepared to offer either of what we perceive to be petitioners' "top two" requests for settlement -- and a very possible outcome would be EPA would need to file its brief on June 1 and the litigation would proceed. Pat felt strongly that, since Bob Sussman was the one who directed us to try to settle this case, we needed to make sure that he fully understood the legal risks of going forward with the litigation, so he can make a final call regarding any potential settlement offers. (Recall that Bob was never actually briefed on the issues in this litigation or the legal risks; he wasn't able to make it to the briefing that we had set up for him earlier). So, Pat asked that we set up a meeting with Bob this week to discuss the legal risks. We plan to do so, and plan to invite both OW and the Region to join us.

**Mike Shapiro, Ephraim King and Mike Bussell:** We understand you will be in Denver this week. We are going to see if we can schedule a meeting with Bob on Wednesday during a time that looked like it might work for your WMDD agenda: between 10:30 - 1 MDT or between 2:15 -3:30 MDT. If you have other times on Wednesday or Thursday that would be better, let us know.

**Settlement Discussion with Petitioners on May 7th:** EPA attorneys and OW and Region 10 program staff also talked with the litigants late last Thursday to discuss our response to the items on their wish list. We told them that we would likely be able to agree to require Alaska to adopt antidegradation implementation procedures by a date certain or EPA would propose to establish for the state (but that we were still working on what that timeline would be). We also said we'd likely be able to agree to greater permit oversight and to try to facilitate discussions with industry re zero discharge. Petitioners did not indicate much of a response, one way or the other, to these two proposals.

We also told them that we were unlikely to be able to agree to either the ELG revision or the permit modification. On the ELG revision, they asked whether we could get around the economic achievability concerns by setting technology-based limits based on BPJ for certain pollutants that weren't directly regulated under the ELG; they believed this would allow a facility-by-facility approach to determining whether more stringent limits are economically achievable, which may result in more stringent limits for certain facilities that could afford it. Legally, we don't think this is a viable option. While our regulations authorize us to establish BPJ-based limits for pollutants not covered by an ELG, here, the record indicates that the ELG was intended to cover all toxics (we established limits for oil and grease as an indicator parameter for all toxic pollutants). In other words, the ELG "occupies the field" with respect to the regulation of toxic pollutants and we don't think we can use our BPJ authority to require more stringent technology-based limits for the pollutants referenced by the petitioners.

In the meantime, please me know if you have any questions, and look out for an invite for a briefing for Bob Sussman in the next few days. I will send around an updated briefing paper prior to that meeting. Thanks.

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----- Forwarded by Pooja Parikh/DC/USEPA/US on 05/29/2013 02:35 PM -----

From: Maryt Smith/DC/USEPA/US  
To: Janet Goodwin/DC/USEPA/US@EPA, Carey Johnston/DC/USEPA/US@EPA, Pooja Parikh/DC/USEPA/US@EPA  
Date: 05/11/2009 04:28 PM  
Subject: Fw: Fw:

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----- Forwarded by Maryt Smith/DC/USEPA/US on 05/11/2009 04:28 PM -----

From: Ephraim King/DC/USEPA/US  
To: "Maryt Smith" <[Smith.Maryt@epamail.epa.gov](mailto:Smith.Maryt@epamail.epa.gov)>  
Date: 05/11/2009 03:17 PM  
Subject: Fw:

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FYI

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Sent by EPA Wireless E-Mail Services

▼ Mike Bussell

----- Original Message -----

**From:** Mike Bussell  
**Sent:** 05/11/2009 09:27 AM PDT  
**To:** Ephraim King  
**Cc:** Mike Gearheard; Hanh Shaw; Courtney Hamamoto; David Allnutt; Michael Lidgard; Marcia Combes; Dianne Soderlund  
**Subject:** Re:

Thanks Ephraim. We can touch base more in Denver. Also, not sure we can offer much to the petitioner otherwise. Difficult to see how we could get permits out prior to the state assuming authorization. Maybe something on the anti-deg front.

▼ Ephraim King/DC/USEPA/US

Ephraim King/DC/USEPA/US

05/11/2009 05:15 AM

To: M ke Gearheard/R10/USEPA/US@EPA, M ke Bussell/R10/USEPA/US@EPA  
cc: M ke Shapiro/DC/USEPA/US@EPA, Maryt Smith/DC/USEPA/US@EPA, Lee

Schroer/DC/USEPA/US@EPA, Steven  
Neugeboren/DC/USEPA/US@EPA

Subject

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Ephraim King, Director  
Office of Science and Technology  
Office of Water  
U.S. EPA

----- Forwarded by Pooja Parikh/DC/USEPA/US on 05/29/2013 02:35 PM -----

From: Pooja Parikh/DC/USEPA/US  
To: Maryt Smith/DC/USEPA/US@EPA  
Cc: Carey Johnston/DC/USEPA/US@EPA, Janet Goodwin/DC/USEPA/US@EPA  
Date: 08/11/2009 09:16 AM  
Subject: Fw: Cook Inletkeeper v. EPA...

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----- Forwarded by Pooja Parikh/DC/USEPA/US on 08/11/2009 09:00 AM -----

From: "Emily Anderson" <[eanderson@trustees.org](mailto:eanderson@trustees.org)>  
To: "Pinkston, Daniel (ENRD)" <[Daniel.Pinkston@usdoj.gov](mailto:Daniel.Pinkston@usdoj.gov)>, "Vicki Clark" <[vclark@trustees.org](mailto:vclark@trustees.org)>  
Cc: Courtney Hamamoto/R10/USEPA/US@EPA, Pooja Parikh/DC/USEPA/US@EPA  
Date: 08/07/2009 04:32 PM  
Subject: RE: Cook Inletkeeper v. EPA...

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Hi Dan-

Thanks for your response to our August 3rd email. It appears that we have some more things to discuss and clarify, but we certainly appreciate your willingness to put what is offered thus far in writing. It will help us and our clients fully understand what EPA intends to accomplish with the offers, as well as, the benefits and limitations of them.

As you have gleaned from our previous email, our clients are still concerned about whether the proposed terms of the settlement would actually improve water quality in Cook Inlet. To be clear, while the options EPA has proposed are interesting, the two options alone are not enough for our clients to agree to settle the case.

Since the majority of the produced water is generated from Trading Bay it is certainly our clients' greatest concern. To that end, pulling Trading Bay out of the general permit and creating an individual permit for that facility is a good start, but there also needs to be some assurances in place so the industry does not simply bypass the potentially stricter requirements at Trading Bay and instead shift the majority of their oil production operations to another facility with less stringent limits (i.e., Granite Point). This would not improve water quality in Cook Inlet.

In addition, we still need to discuss the long term implications that continuing to allow the oil and gas facilities to discharge pollutants directly into Cook Inlet will have on water quality. If EPA is not considering zero-discharge for these facilities now, how will the water quality in Cook Inlet be maintained or improved in the future when the oil and gas facilities continue to age and produce even greater amounts of toxic pollutants? An individual permit for Trading Bay is an interim step but zero-discharge is what should be required. It is understood that this would take some time, but we should discuss whether EPA will at some point agree to

reevaluate the ELGs or find other creative ways to bring, at the very least, Trading Bay to zero-discharge at some time in the foreseeable future. We have already raised some ideas that we could discuss again.

As indicated in the previous email, our clients are also concerned that the other facilities and platforms operating under the general permit still have limits that are too lax, especially with regard to the limits in the current permit that are less stringent than those under the previous permit. I realize that we discussed modification of the general permit early on in the process, but I don't believe we ever discussed a modification to restore only those effluent limits for parameters that were made less stringent. This is something that we need to discuss further because some of those parameters are metals that are known to adversely affect salmon, which supports the livelihood of most of our clients.

As for the proposal regarding the anti-degradation implementation plan, our clients feel that it is something that should be pursued, but not really something that has much direct bearing on their specific concerns in this case. It is also something that EPA should have addressed at some point in the last 13 years. That is another reason why our clients feel that these two options alone do not provide enough incentive to settle the case.

Finally, we understand your concern about the timing of the mediation deadline and know that our difficulty in reaching our clients during the portion of the year that they are working and fishing for subsistence has contributed to the delay in coming to a decision about settlement. If we collectively decide that these important parts of a settlement discussion may come to fruition and we may reach a settlement, we will certainly work with you to reevaluate the timing and extend the briefing schedule.

I hope that this email provides some clarity about our clients' concerns and their current position on what is important for a settlement. Please let us know if you have any additional questions. We look forward to hearing from you soon.

Thanks,

Emily Anderson

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Trustees for Alaska  
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-----Original Message-----

From: Pinkston, Daniel (ENRD) [<mailto:Daniel.Pinkston@usdoj.gov>]  
Sent: Tuesday, August 04, 2009 2:32 PM  
To: Vicki Clark; Emily Anderson  
Cc: [Hamamoto.Courtney@epamail.epa.gov](mailto:Hamamoto.Courtney@epamail.epa.gov); [Parikh.Pooja@epamail.epa.gov](mailto:Parikh.Pooja@epamail.epa.gov)  
Subject: Cook Inletkeeper v. EPA...

Emily and Vicki:

Thanks for your email of Monday, August 3. We have some thoughts on the issues you raised there -

1. We are sorry if the contract timing issue appeared to present a "false deadline," as you put it. Our point was that the money we had obtained for this purpose had to be obligated before the end of the fiscal year (ie. Sept. 30th). Since it is clear that we will not be able to reach an agreement by August 7, we are investigating whether it will be possible for us to obtain funds for the next fiscal year.

2. We will put an offer in writing. We do need to state what you undoubtedly already understand - neither the attorneys nor technical people have the authority to settle on behalf of the United States; any

settlement is contingent on approval of appropriate EPA and Justice Department officials and on coming up with acceptable settlement papers.

3. As to reinstating previous permit limits that were more stringent than those in the current permit, we do not have any authority at this point to offer that. We did raise this issue with our management in earlier discussions, and they were prepared to offer only the two items we have put on the table.

4. We assume that your fourth point, a timetable for developing zero discharge limits for the facilities, is a request that EPA revise the current ELGs for Cook Inlet. As we indicated in previous settlement discussions, EPA is not inclined to open up a formal process for the modification of the current ELG, since it is unlikely that, given the current state of knowledge, the ELG exception would be revised. We understood from our earlier discussions that you would be willing to consider options other than revision of the ELG. If this has changed - that is, if a timetable for zero discharge is now an absolute prerequisite to settling this litigation - please let us know so we can take this back to our management.

In the meantime, can you give us an idea of your clients' reaction to our previous thoughts on getting antidegradation implementation language into the Alaska water quality standards and to requiring an individual permit for the Trading Bay Production Facility? I understand that you cannot give us a final answer until you see the offer in writing - which we will attempt to put together in the next few days. But, it would be helpful to hear at least generally what your clients' reactions were to these proposals.

Finally, we are getting concerned about the timing of our mediation deadlines. As you know, we have a status report to the Court due on August 19th, and if we're unable to settle, a brief due on September 21 st. These dates are fast-approaching, and we would prefer not to turn our resources towards writing the brief when there is still a possibility of settlement. Given the delays in communicating with your clients and your desire not to be rushed into a decision, we should think about the scheduling on the mediation.

Dan Pinkston

----- Forwarded by Pooja Parikh/DC/USEPA/US on 05/29/2013 02:35 PM -----

From: Pooja Parikh/DC/USEPA/US  
To: Maryt Smith/DC/USEPA/US@EPA  
Cc: Courtney Hamamoto/R10/USEPA/US@EPA  
Date: 04/23/2009 04:53 PM  
Subject: Cook Inlet options paper

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(b) (5)



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To: Janet Goodwin/DC/USEPA/US@EPA, Carey Johnston/DC/USEPA/US@EPA, Pooja Parikh/DC/USEPA/US@EPA  
Date: 05/11/2009 10:30 AM  
Subject: EK's cook inlet note

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Cc: Mike Shapiro/DC/USEPA/US@EPA, Maryt Smith/DC/USEPA/US@EPA, Lee Schroer/DC/USEPA/US@EPA, Steven Neugeboren/DC/USEPA/US@EPA  
Date: 05/11/2009 08:15 AM  
Subject:

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